

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EMANUEL REDDEN,

Plaintiff,

v.

CORRECTIONAL OFFICER DIEZ,

Defendant.

Civil Action No. 05-241-GMS

DEFENDANT’S ANSWER TO COMPLAINT

COMES NOW, the Defendant Correctional Officer Lauro Diaz (“Diaz” or “Defendant”), by and through his undersigned counsel, and hereby responds to the unnumbered Complaint of Plaintiff Emanuel Redden (“Redden” or “Plaintiff”), dated April 2, 2005 and filed April 25, 2005 (D.I. 2) (the “Complaint”), as follows:

STATEMENT OF CLAIM

The allegations of Plaintiff’s Statement of Claim are denied. By way of further response Defendant Diaz denies that he struck Plaintiff on or about August 28, 2004 or that he violated Plaintiff’s constitutional rights.

RELIEF

Defendant Diaz denies that Plaintiff is entitled to any relief.

DEFENSES AND AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief may be granted.
2. This action and all claims are barred by Eleventh Amendment immunity.

3. As to any claims against the State or against the Defendant in their official capacities, Defendant and the State are protected from liability by the doctrine of sovereign immunity.

4. The Defendant is entitled to qualified immunity.

5. As to any claims under state law, the Defendant is entitled to immunity under the State Tort Claims Act, 10 Del. C. §4001 *et seq.*

6. Defendant, in his official capacity, is not liable for alleged violations of Plaintiff's constitutional rights as he is not a "person" within the meaning of 42 U.S.C. § 1983.

7. Plaintiff has failed to allege a physical injury.

8. Plaintiff has failed to exhaust his administrative remedies.

9. Defendant cannot be held liable in the absence of personal involvement for alleged constitutional deprivations.

10. Insufficiency of service of process.

11. Insufficiency of process.

12. Lack of jurisdiction over the person and subject matter.

WHEREFORE, Defendant Diaz respectfully requests the Court grant judgment in his favor and against the Plaintiff in all respects, and enter an Order (i) dismissing the Complaint in its entirety; (ii) awarding Defendant Diaz his fees and costs; and (ii) granting such other and further relief as is just and proper.

**DEPARTMENT OF JUSTICE
STATE OF DELAWARE**

/s/ Erika Y. Tross

Erika Y. Tross (#4506)

Deputy Attorney General

820 N. French Street

Wilmington, DE 19801

(302) 577-8400

Attorney for Defendant Correctional
Officer Diaz

Dated: May 16, 2006

CERTIFICATE OF SERVICE

I, Erika Y. Tross, Esq., hereby certify that on May 16, 2006, I caused a true and correct copy of the attached *Defendant's Answer to Complaint* to be served on the following individual in the form and manner indicated:

NAME AND ADDRESS OF RECIPIENT(S):

Inmate Emanuel Redden
SBI #00092507
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

MANNER OF DELIVERY:

- ☐ One true copy by facsimile transmission to each recipient
- ☒ Two true copies by first class mail, postage prepaid, to each recipient
- ☐ Two true copies by Federal Express
- ☐ Two true copies by hand delivery to each recipient

/s/ Erika Y. Tross

Erika Y. Tross (#4506)
Deputy Attorney General
Delaware Department of Justice
Carvel State Office Building
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8400
Attorney for Defendant Correctional Officer
Diaz